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No. 109

In the Supreme Court of the United States

OCTOBER TERM, 1944

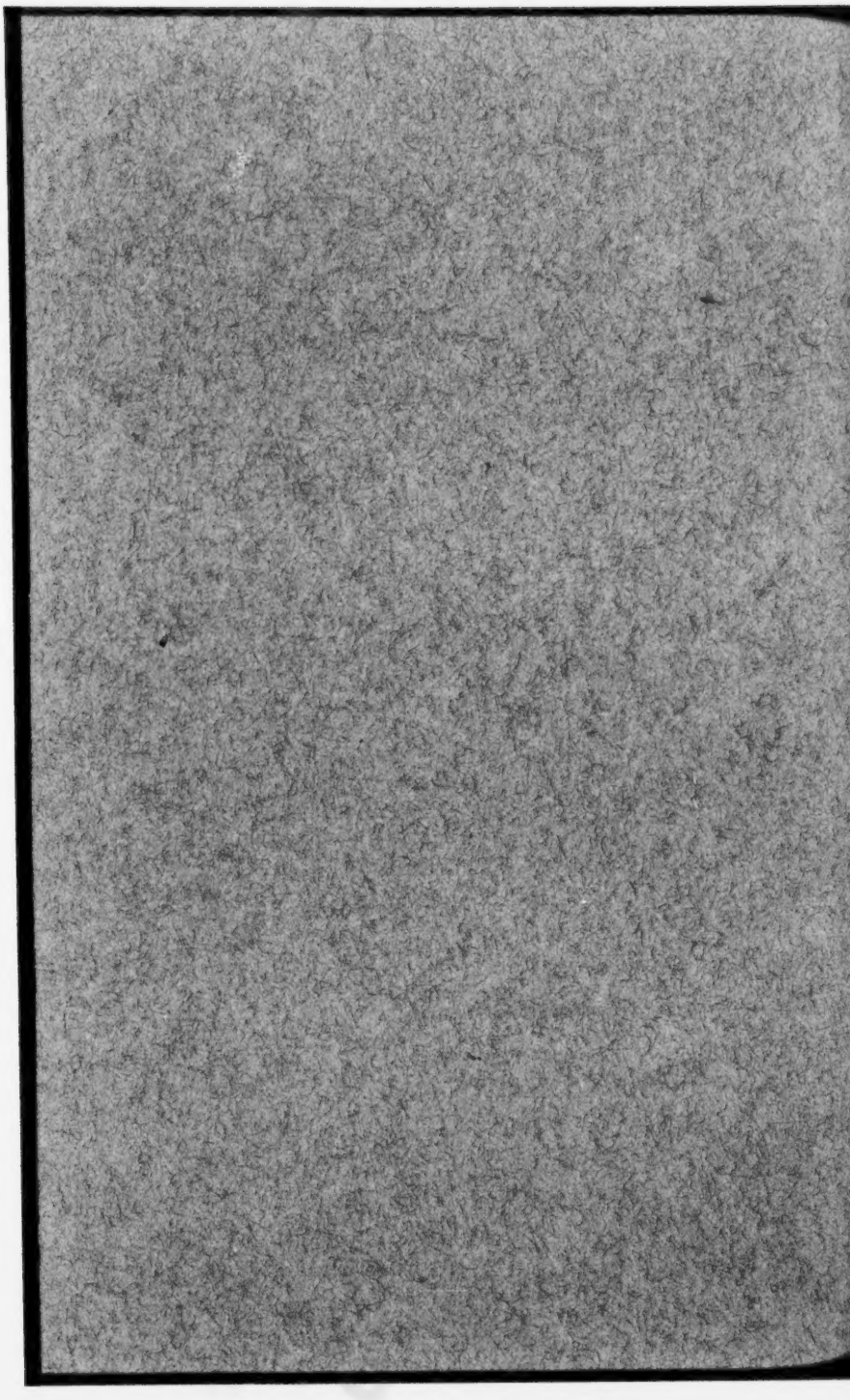
SAMUEL ZIELBERG AND MAX GOLDBERG, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION



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In the Supreme Court of the United States

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OPINION BELOW

The opinion of the circuit court of appeals (R. 115–124) has not yet been reported. No opinion was rendered by the district court.

JURISDICTION

The judgment of the circuit court of appeals was entered on April 24, 1944 (R. 124). The petition for a writ of certiorari was filed on May 29, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

QUESTIONS PRESENTED

1. Whether the evidence is sufficient to sustain the convictions.

2. Whether the jury's verdicts as to Zimberg and Goldberg on counts 2 and 4 are inconsistent. If the answer is in the affirmative, whether for that reason alone Goldberg is entitled to a new trial.

3. Whether the trial judge committed reversible error:

(a) As to petitioner Goldberg in admitting the testimony of witness Byron concerning the price charged him by petitioners.

(b) As to petitioner Zimberg in admitting in evidence under counts 8, 9 and 10, the "manager's ledger" sheets.

(c) As to petitioner Goldberg in neglecting to instruct the jury to disregard certain evidence which had been stricken from the record in the absence of the jury.

STATUTE AND REGULATIONS INVOLVED

Sections 2 and 4 (a) of the Emergency Price Control Act of 1942, 56 Stat. 23 (50 U. S. C. App. 902 (a), 904 (a)), provide in part:

> SEC. 2 (a). Whenever in the judgment of the Price Administrator * * * the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum

price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act * * *.

* * * * *

SEC. 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity * * * or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, * * * or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 1364.401 (7 Fed. Reg. 10382 *et seq.*) of Revised Maximum Price Regulation No. 169, provides in part:

SEC. 1364.401. (a) *Beef carcasses and wholesale cuts.* On and after December 16, 1942, regardless of any contract, agreement, or other obligation no person shall sell or deliver any beef carcass or beef wholesale cut * * * at a price higher than the maximum price permitted by § 1364.451; and no person shall agree, offer, solicit or attempt to do any of the foregoing * * *.

Section 1364.451 (7 Fed. Reg. 10385, 10387) of Revised Maximum Price Regulation No. 169 provides in part that the maximum wholesale price which may be charged in Massachusetts for beef hindquarters, "AA" grade, is 27¼ cents a pound, for beef hindquarters of the "good"